TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1190.

THE WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD McNEILL, AND CHARLES P. LIBBY, APPELLANTS,

vs.

ROBERT D. HUNTER, H. B. MERRILL, HENRY L. NEWMAN, AND THE SAINT LOUIS BEEF CANNING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 11, 1882.

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1 *Placita.*

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable Thomas Drummond, judge of the seventh judicial circuit, on Tuesday, the 6th day of December, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the one hundred and sixth year.

J. A. JONES,
Clerk.

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNiel, and Charles P. Libby,
vs.
ROBERT D. HUNTER, H. B. MERRELL, HENRY L. Newman, and the St. Louis Beef Canning Company.
No. 5301.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

2 The Wilson Packing Company, a corporation organized under and by virtue of the laws of the State of Illinois, and Arthur A. Libby, Archibald McNiel, and Charles P. Libby, citizens of the State of Illinois, bring this their bill, by Messrs. Goodwin, Offield and Towle, their solicitors, against Robert D. Hunter, H. B. Merrill, Henry L. Newman, and the St. Louis Beef Canning Company, citizens of the State of Missouri, defendants, who put in their place Messrs. Noble and Orrick and Bluford Wilson, their solicitors, at the suit of complainants in the bill aforesaid.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 23d day of February, in the year of our Lord one thousand eight hundred and seventy-eight, came the complainants in said cause by their solicitors, and filed in the clerk's office of said court their bill herein, which said bill is in the words and figures following, to wit:

Bill.

3 United States circuit court, southern district of Illinois.

To the honorable the judges of the circuit court of the United States for the southern district of Illinois, in chancery sitting:

The Wilson Packing Company, a corporation organized under and by virtue of the laws of the State of Illinois, and having their principal place of business at Chicago, and Arthur A. Libby, Archibald McNeill, and Charles P. Libby, of Chicago, in the State of Illinois, and citizens of said State, bring this their bill of complaint against Robert D. Hunter, H. B. Merrill, and Henry L. Newman, of St. Louis, in the State of Missouri, and the St. Louis Beef Canning Company, a corporation existing under and by virtue of the laws of the State of Missouri, and having their principal place of business at St. Louis, in said State, and citizens of said State.

4 And thereupon your orators complain and say that before the sixth day of April, eighteen hundred and seventy-five, John A. Wilson was the true, original, and first inventor of a certain

new and useful improvement in sheet metal cans, not known or used by others before his said invention thereof and which had not at the time of his application for a patent therefor been in public use or on sale, with his consent or allowance, for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said John A. Wilson, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied, in all respects, with the conditions and
5 requisitions of said laws, such proceedings were had that on the sixth day of April, eighteen hundred and seventy-five, letters patent of the United States, for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, were issued in due form of law and delivered to the said John A. Wilson, whereby was granted and secured to him, and his heirs or assigns, for the term of seventeen years from the day of the date thereof, the full and exclusive right of making, using, and vending to others to be used, the said improvement and invention; a description whereof is given in the words of the said inventor in a schedule in writing, accompanied by drawings and references thereto, duly annexed to said letters patent when the same were issued and made a part thereof, as by said original letters patent, or a duly authenticated copy thereof, in court to be produced, will fully appear.

6 And your orators further show unto your honors that by a certain mesne assignment in writing from and under the said John A. Wilson, duly recorded in the Patent Office at Washington, your orator, the said Wilson Packing Company, become vested with all the exclusive rights and privileges, and with all the interest granted in and by the said above-mentioned letters patent and invention to said John A. Wilson.

And your orators further show that by an assignment or agreement in writing, duly recorded in the Patent Office, your orators are, and since the seventeenth day of July, 1875, have been the sole and exclusive owners of the said above-mentioned letters patent, and all the rights and privileges granted and secured thereby, the legal title thereto being vested in your orators, the Wilson Packing Company, in trust for themselves and the others of your said orators.

And your orators further show unto your honors that afterwards the said John A. Wilson (your orators consenting) for a good and
7 lawful cause, surrendered said last mentioned letters patent to the Commissioner of Patents, and duly made application for a new patent to be issued for the same invention, and accompanied such application with a corrected description and specification, and with the requisite drawings, and in all respects complied with the acts of Congress in such cases made and provided; whereupon, on the twenty-third day of October, eighteen hundred and seventy-seven, new letters patent for the same invention last-mentioned were in accordance with law duly granted, issued, and delivered to the said John A. Wilson for the benefit of your orators for the residue of said term of seventeen years; that said last-mentioned letters patent were issued in accordance with and in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior

and countersigned by the Commissioner of Patents, and bear date the day and year last aforesaid, and were numbered and designated
8 as reissue No. 7923, and that there was by said last-mentioned reissued letters patent secured to the said John A. Wilson, his heirs or assigns, for the term of seventeen years from the sixth day of April, eighteen hundred and seventy-five, the full and exclusive right of making, using, and vending to others to be used the said original improvement and invention; that a legal corrected description and specification of said original improvement and invention contained in said reissued letters patent is given in the words of the said John A. Wilson in a certain schedule, accompanied by drawings and written references thereto, which was in due form of law annexed to said reissued letters patent at the time the same were issued and made a part thereof, as by the last-mentioned reissued letters patent, or a duly authenticated copy thereof to be produced as the court shall direct, will fully appear; a copy of which without the drawings is hereto
9 annexed, forming part of this bill marked, Schedule A.

And your orators further show on information and belief that the said defendant Robert D. Hunter is the president of the said defendant corporation, the St. Louis Beef Canning Company, and that the said Robert D. Hunter has his office and place of business at East St. Louis, in the State of Illinois, and within the southern district of said State; that said defendant H. B. Merrill is the secretary of said defendant corporation, and has his office and place of business at said East St. Louis, in the State of Illinois, and the office of the secretary of said corporation is at the latter place; that the said defendant Henry L. Newman is treasurer of said defendant corporation, having his business place and office at said East St. Louis, in the State of Illinois, and that the office of the treasurer of said defendant corporation is at the latter place; that the said Robert D. Hunter, H. B. Merrill, and Henry L. Newman
10 are directors of the said defendant corporation and managers of its affairs; that the said St. Louis Beef Canning Company owns or possesses a slaughter-house and stock-yards at East St. Louis aforesaid, where the beef to be canned by said company is slaughtered and dressed perparatory to said canning by the officers and agents of said company for it and in the name of said company; and that said company is doing business as a corporation in the State of Illinois.

And your orators further show unto your honors that since the granting of the said letters patent aforesaid, the said patentee, and those acting under him, have brought the said invention into public use in various parts of the country, and that the same is of great value and has remained in the exclusive possession and use of said patentee and those holding under him to the great benefit of the public and great gains to said patentee and assignees, of which gains your orators are un-
11 justly deprived by the acts of the defendants hereinafter mentioned.

And your orators further show unto your honors that since the twenty-third day of October, eighteen hundred and seventy-seven, and at divers times and occasions between that time and the time of filing this your orators' bill of complaint, the defendants herein, Robert D. Hunter, H. B. Merrill, and Henry L. Newman, individually, and as officers of the St. Louis B of Canning Company, and the said defendant corporation, the St. Louis Beef Canning Company, at East St. Louis, in the southern district of the State of Illinois, and elsewhere in the United States, well knowing the premises, and without any legal assignment, grant, or license therefor, and in defiance of your orators' pat-

ent rights aforesaid, have made and constructed, or caused to be made and constructed for use, and have sold and are now making, constructing, using, and selling, large numbers of sheet-metal cans and articles of manufacture, substantially like and upon the plan and
12 principle and in imitation of and embracing in each of said sheet metal cans and articles of manufacture either the whole or one or more of the said inventions and improvements contained in said letters patent No. 7923, and the said defendants persist in so doing, and refuse to desist, although warned and requested so to do, whereby great injury has resulted to your orators, and great gains and profits to a large sum of money have accrued to the said defendants from the use of your orators' exclusive rights, the full amount of which is unknown to your orators, but which in equity belong to your orators, and should be accounted for by the said defendants as damages to your orators, and paid over to your orators as the avails of their exclusive rights aforesaid, and profits and gains which your orators would have derived from their said patent rights, but for the unlawful acts of the said defendants.

13 To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief herein prayed, and may upon their corporal oaths with regard to the certain specified interrogatories hereto annexed, and numbered 1, 2, 3, but without oath as to the residue of this bill (an answer on oath, except with regard to said specified interrogatories, being hereby expressly waived), and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises, and that they may be decreed to account for and pay over to your orators from the unlawful making, using, or vending the improvement vested in your orators as aforesaid, and may be perpetually restrained by an injunction to be issued out of this honorable court from making, using, or vending any sheet metal cans and articles of manufacture containing the improvement and in-
14 vention secured as aforesaid to your orators or any material part thereof, and that your orators may have such other or further relief as equity may require and to your honors seem meet.

May it please your honors, to grant unto your orators a writ of injunction conformable to the prayer of this bill, until the further order of this court, and also a writ of subpœna directed to the said defendants, Robert D. Hunter, H. B. Merrill, Henry L. Newman, and the Saint Louis Beef Canning Company, and commanding them at a certain time, and under a certain penalty, to appear before your honors in this court, then and there to answer unto this bill of complaint, and to abide by and perform such decree as the court shall make in the premises; and your orators will ever pray, etc.

THE WILSON PACKING COMPANY,
By JOHN A. WILSON, *Secretary.*
15 ARTHUR A. LIBBY,
ARCHIBALD McNEILL,
CHARLES P. LIBBY,
By GOODWIN, OFFIELD & TWOLE,
Their Solicitors.

GOODWIN, OFFIELD & TWOLE,
JOHN N. JEWETT,
Solicitors & of Counsel for Complainant.
L. L. BOND and MUNDAY & EVARTS.
MR. MUNDAY for the firm of counsel.

UNITED STATES of AMERICA,
Northern District of Illinois, ss:

John A. Wilson, secretary of the said Wilson Packing Company, complainant, being duly sworn, deposes and says that he has heard the foregoing bill signed by complainants read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes the same to be true; and said deponent further says that he does verily believe that he was the original and first inventor of the thing patented to him as in said bill stated.

16 JOHN A. WILSON.

Subscribed and sworn to this 19th day of February, 1878, before me.

JOHN H. WHIPPLE,
Notary Public.

Interrogatories referred to in the annexed bill of complaint.

First interrogatory. State whether the patent was issued by the United States, as in said bill of complainant stated and set forth.

Second interrogatory. State whether the defendants, or either of them, have made, used, or sold, or caused to be made, used, or sold, since the twenty-third day of October, 1877, any sheet-metal cans or articles of manufacture in said patent described; and, if so, when and how many of the same.

Third interrogatory. How were the said sheet-metal cans or articles of manufacture constructed? State particularly the process and manner of construction of the same in detail.

17 SCHEDULE A.

United States Patent Office.

John A. Wilson, of Chicago, Illinois, improvement in sheet-metal cans.

Specification forming part of letters patent No. 161848, dated April 6, 1875; reissue No. 7923, dated October 23, 1877. Application filed October 15, 1877.

To all whom it may concern:

Be it known that I, John A. Wilson, of Chicago, in the county of Cook, and in the State of Illinois, have invented certain new and useful improvements in metallic cans for containing cooked meats; and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making a part of this specification.

My invention relates to hermetically-sealed cans used in packing meats or other articles; and it consists in a pyramidal shaped
18 can, having rounded corners, and both ends slightly flaring to form shoulders, against which the head or end pieces rest, as will be hereinafter more fully set forth.

In order to enable others skilled in the art to which my invention appertains to make and use the same, I will now proceed to describe its construction and operation, referring to the annexed drawing, in which—

Figure 1 is a perspective view of my can; figure 2 is a transverse

vertical section of the same reversed; *a* represents the body of my can, made in the form of a truncated pyramid, with rounded corners, and of any desired number of sides, though I prefer to make with four sides. Both ends of the body are made slightly flaring, as shown, so as to form interior shoulders, or offsets, *a*, against which the heads B and C are to rest. The edges of these heads are turned outward, as shown, at *b*, and flaring-edge *d*, of the end of the can, is turned inward over
19 the flange *b*, and the three thicknesses of metal pressed together by machinery, with or without solder, so as to make air-tight joints.

In packing cooked meats it is done by means of a plunger through an aperture in the large head B, which opening is afterwards hermetically sealed by means of a cap or plate, D. In the plate D is a vent or opening, *i*, to allow the air or gases to escape that are generated while hermetically sealing the can, and to prevent the meat from closing said vent it is protected by means of a trough or gutter, *h*, attached to the under side of the plate, which trough is open at both ends; or in place of this trough a perforated diaphragm may be used to answer the same purpose. The can is to be opened at the larger end, or at the shoulder *a*, by means of a suitable can opener, so that when the can is reversed again a slight tap on the smaller head C will cause the solidly packed meat to slide out in one piece so as to be readily sliced, as desired.

20 Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. A can for packing food, hermetically sealed, and constructed of pyramidal form, with rounded corners and offset ends to support the heads, said heads being secured as shown and described.

2. The perforated plate D, in combination with head B or C, provided with protector *h*, substantially as and for the purpose set forth.

3. As an improved article of manufacture, solid meat compressed and secured within a pyramidal case or can, so that said can forms a mold for the meat, and permits its discharge as a solid cake, substantially as specified.

JOHN A. WILSON.

Witnesses:
EDWARD S. EVARTS.
FORDE R. SMITH.

(Endorsed:) Filed Feb'y 23d, A. D. 1878. J. A. Jones, clerk.

21 And afterwards, to wit, on the same day, and in the year last aforesaid, there was issued out of said clerk's office a subpœna in said cause, directed to the marshal of said district to execute, which said subpœna is in the words and figures following, to wit:

Chancery subpœna.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of April next, to answer the bill of complaint of the Wil

son Packing Company this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide
22 by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and second year.

[L. S.] J. A. JONES, *Clerk.*

Memorandum.

The above named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

J. A. JONES, *Clerk.*

Marshal's return.

The within named defendants not found in my district. March 28, '78.

E. R. ROE,
U. S. Marshal,
By G. C. McCORD.

23 (Endorsed:) Filed April 3, A. D. 1878. J. A. Jones, clerk.

And afterwards, to wit, on the 21st day of July, in the year of our Lord one thousand eight hundred and seventy-nine, came the said defendants, by their solicitors, and filed in said clerk's office their answer in said cause, which said answer is in the words and figures following, to wit:

24 *Answer.*

UNITED STATES OF AMERICA.
Southern District of Illinois, ss:

In the circuit court of said United States in & for said southern district of Illinois. In chancery.

THE WILSON PACKING COMPANY ET AL., COMplainants,
vs.
ROBERT D. HUNTER ET AL., DEFENDANTS.

The joint and several answer of The St. Louis Beef Canning Company, Robert D. Hunter, H. B. Merrill, and Henry S. Newman, defendants, to the bill of complaint of the Wilson Packing Company, Arthur A. Libby, Archibald McNeil, and Charles P. Libby, complainants.

These defendants, now and at all times hereafter, saving unto themselves all and singular all manner of benefit or advantage of exception

or otherwise than can or may be had or taken of the many errors and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised is material or necessary for them to make answer to, answering, say:

25 That by no alleged assignment or agreement in writing, recorded, as alleged, in the Patent Office, are said complainants, or they have been since July 17, 1875, or before said date, the sole and exclusive owner of said alleged letters patent or of any of the pretended rights or privileges purported to be secured thereby; and defendants say that no legal title is vested in said Wilson Packing Company in trust for themselves and said other complainants, in manner and form as in said bill stated by said alleged writing.

And defendants say that by a certain instrument in writing, dated July 17, 1875, and recorded in said Patent Office, and which purports to be an assignment by said Arthur A. Libby, complainant, only of any right, title, and interest he may have in said letters patent, and which defendants say is the only instrument in writing, or assignment, or agreement referred to, or intended to be referred to, by the complainant in this behalf, as defendants are informed and believe, and so say, no trust was, or is, created, or intended to be created in favor of said complainants Archibald McNeil and Charles P. Libby; and defendants say that neither by the said instrument in writing nor in any other manner, or in any way, have said last named complainants, or either of them, acquired or become vested with any right, title, or interest, legally or equitably, in the said alleged letters

26 patent, or either of them, nor in any supposed right or privilege purporting to be thereby granted, or either of them.

And defendants say that the said Archibald McNeil and Charles P. Libby are illegally and improperly joined as complainants in said bill with the said Wilson Packing Company and Arthur A. Libby, as are also the said Wilson Packing Company and the said Arthur A. Libby illegally and improperly joined with the said Archibald McNeil and Charles P. Libby as complainants in the said bill, the one with the other. And defendants do now insist, and shall at all times insist, upon said misjoinder as a defense to the whole of said bill.

These defendants, further answering, say they are informed and believes that on the 6th day of April, A. D. 1875, letters patent of the United States were issued to and delivered to said John A. Wilson for an alleged improvement in sheet-metal cans; but defendants say the same were not for any actual improvement in fact, and said letters patent were not the same, in manner and form alleged in said bill; and defendants ask that complainants may be required to produce in support of said bill said original letters, if any there are, and defendant begs leave to refer thereto for greater certainty.

27 These defendants say they are not informed otherwise than by said bill, whether any mesne assignment of said letters patent was made to said Wilson Packing Company, or recorded, as alleged, in the Patent Office, and cannot admit or deny the same; but defendants say that neither by any assignment or otherwise were said Wilson Packing Company vested with any exclusive rights or privileges or any interest, in manner and form alleged.

And these defendants say it is not informed, save by said bill, and cannot admit or deny whether said John A. Wilson surrendered the letters patent alleged to have been surrendered by said bill, in manner and form stated. These defendants admit that on the 23d day of April, 1877, certain letters patent were granted and delivered to the said John

A. Wilson which bore date as stated, and which were numbered 7923, as stated; but defendants say they are informed and believe that the said letters patent last named were not for the same invention for which said original letters patent were issued, or for any invention or improvement in point of fact, or were said original letters patent for any invention or improvement in point of fact, and were not for the use or benefit of complainants.

28 And defendants say, as they are informed and believe, and so charge the said last-mentioned letters patent No. 7923, purporting to be a reissue for said certain other original letters patent surrendered therefor, or for any invention, but for another and different supposed or pretended invention from the supposed or pretended invention described in said original letters patent, as by a comparison of the said reissued letters patent, and the schedule thereunto annexed, with said original letters patent, by this honorable court to be made, will fully appear, and that thereby, as defendants say, the said reissued letters patent were from the beginning, and now are, absolutely void on their face, and of no effect.

Defendants do not admit either the said original or reissued letters patent were for any actual invention, improvement, or discovery, but aver, as aforesaid, they were not, nor was either of them; but that said reissued letters were for a different pretended invention from the supposed invention in said original letters set forth, as appears thereby.

And defendants, further answering, deny that since the granting of said pretended letters patent the said pretended patentee, or those acting under him, have brought said supposed invention into public use at any place, in manner and form stated; and deny that the said pretended invention is of great value to the patentee, or those claiming under them, or said complainants.

29 These defendants say that said improvement in sheet-metal cans is and has been of great value to the people at large, and said improvement, defendants aver, is the same described and referred to in complainants' bill, and which said complainants have attempted, by means of said pretended patent, to appropriate to themselves, but deny that the improvement is of any peculiar value to complainants, or either of them, by means of said letters patent, or that said complainants have acquired any legal or equitable rights thereto. And defendants deny that the said supposed improvement has remained in the exclusive possession of said pretended patentee, or those claiming under him, or either of them, or that the same has been of great benefit to the public otherwise than as an improvement well understood and known before said letters patent were issued, and independent of said letters patent; and deny that the same have been of great gain to the said patentee or assignees by any rightful claim thereto, or otherwise, than by the illegal appropriation thereof, and deny that the said complainants, or either of them, have been deprived by the acts of the defendants, or either of them, of any gains whatever, lawful to have been enjoyed, or in any other manner, as alleged in said bill.

30 And defendants particularly deny that they, or either of them, either at East St. Louis, in the said district of the State of Illinois, or elsewhere, have ever used the said supposed invention and thing patented, as alleged, or ever caused to be made or constructed for use, or ever sold, or are now making, or were at the time of the filing of the bill or amended bill making, constructing, using, or selling, sheet-metal cans, or articles of manufacture using said supposed improvement described in said pretended patent, or substantially like

thereto, or upon a plan or principle or any imitation thereof, or embracing in said packages, or either of them, the whole, or one or more, of said supposed improvements contained as alleged in said pretended letters, or otherwise in manner & form stated, or that the defendants, or either of them have persisted in so doing or refused to desist, or that they have ever been warned or requested so to do.

And defendants deny that any injury has resulted to said complainants, or either of them, or that great gains or profits have accrued to defendants, or either of them, in manner and form as in said bill alleged, or that any accounting is due from defendents to said complainants, or either of them, as claimed.

And further answering in this behalf as to the said supposed and pretended patented improvements, for which letters are claimed to
31 have been issued to the said John A. Wilson, and alleged to have been assigned to the said Wilson Packing Company, and for which, as in said bill alleged, reissued letters patent were granted to the said Wilson Packing Company, No. 7923, defendants further say it is not true that said John A. Wilson was, at the time alleged, or at any time, the true, original, or first inventor of the said supposed and pretended improvement in the said bill mentioned, in manner and form as the complainants have in their said bill alleged.

And defendants further say that the said supposed and pretended invention in the said bill mentioned, and for and in respect to which the said original letters patent were so made as alleged, and assigned, as alleged, by the said Wilson to the said Wilson Packing Company, or for which the said reissued letters patent No. 7923 were granted as alleged, was not, at the time of making said letters patent, in manner and form a new invention as to the public use and exercise thereof: but, as this defendant says, the said supposed process and supposed patented improvement was, long previous to said pretended discovery and to the granting of said letters patent and each of them, well known and in common use in the United States, in Canada, in the Kingdom of Great Britain, and also in France and Germany in Europe, and in Australia, and elsewhere.

32 And defendants say that the state of the art of making sheet-metal cans, was at the time of said pretended discovery, of the said Wilson of the supposed improvement in the said bill claimed, such throughout the United States and Europe, that the process as in said pretended improvement described, and the said schedule to the said several letters set forth was of common knowledge, and in daily use, not only among the manufacturers of metal cans and manufacturers and packers of meats and cooked meats, but in the households of the people, and that the said pretended improvement, and the said application for the said letters patent was a mere attempt by the said Wilson to appropriate to himself a process that had become common, and well understood, and easily attainable by those desiring to practice the same.

And these defendants further state, on information and belief, that the said pretended improvement claimed to have been discovered by the said Wilson has been described in public works long anterior to the supposed and alleged discovery thereof by the said Wilson, and defendants say that the same had been published in the work styled, Tomlinson's Encyclopedia, vol. 1, page —, article, "Food," long anterior to the supposed and alleged discovery of the said Wilson.

33 And defendants further say that the said pretended inventions & improvements, claimed by the said complainants, had been described, and a descriptions thereof published in a work styled,

"Abridgement of Specification relating to Preservation of Food," a book published by George E. Eyre and William Spottswood, of London, England, long anterior to said alleged improvements, and each of them, particularly under the specifications of the patent of Ludvig Granhohn, at page 5, patented August 5th, A. D. 1817, No. 4150; also the patent of Henry Gunter, at page 12, dated January 6, 1841, No. 8776; also the patent of Jean Worthly, at page 39, patented February 20, A. D. 1855; also the patent of C. M. P. de Kermval, at page 36, dated August 26, 1854, No. 1874; also the patent of George Nasmyth, at page 29, dated February 21, 1855, No. 381; also the patent of Peter Durand, at page 4, granted August 25, 1810, No. 3332.

And defendants further say that prior to the supposed invention thereof, by the said patentee named, substantially the same thing as the patent describes, had been shown in certain other printed publications, as follows: "The American Family Encyclopedia of Useful Knowledge, or Book of 7,223 Receipts and Facts," by T. Webster, and M. Parkes, edited by D. W. Reese, published in New York City by J. C. Duty, in 1856, upon pages 784, 785, and 786, thereof, said book
14 being designated on the cover thereof as, "Webster's American Encyclopedia;" also in the "New American Encyclopedia," a popular dictionary of general knowledge, published in New York City by D. Appleton & Co., in the year 1861, in vol. 13, under title, "Preservation of Food," and also for which many other letters patent have been by said Kingdom of Great Britain, by France, and by said United States, granted at various times prior to said several supposed inventions in said bill mentioned, to various persons, whose names and the dates and numbers of whose said patent defendants ask leave to state in a supplement hereto, when discovered.

And defendants further say, that they are informed and believe, and so state, that the said process and pretended improvement claimed by said Wilson, and for which said letters patent were granted to him, was heretofore, and prior to said granting of said letters, well known to John H. Kemp, and Day, copartners as Kemp & Day, at No. 100 Murray street, in the city of New York, State of New York, United States; and also to W. H. Dudly, of same city, who then and there, and also at Portland, Maine, prior to the granting of said letters to said Wilson, and said Marshall, or either of them, practiced the said pretended improvement at said city and elsewhere, as can be proven by said John H. Kemp, and said Day, and John Irwin, and Aaron K. Larabey, witnesses, living or residing at said city of New
35 York, and F. A. Wadner, residing at Chicago, Illinois. And the said supposed improvement was also known to John Romain, and by him practiced in the United States, at No. 141 West street, New York City, State of New York, and in Long Island City, Queen's County, New York, prior to granting said letters, as can be proven by John Romain, as witness, residing at said city of New York, and William H. Henderson, residing at Long Island City, New York.

That the supposed improvement prior to the pretended discovery of the said Wilson was also known to the Portland Packing Company, Maine, and by them practiced in the United States at Portland, Maine, as can be proven by William G. Davis and J. P. Baxter, witnesses residing at said city of Portland; and that the supposed improvement prior to the pretended discovery of the said Wilson was well known to Rumery & Burnham, a copartnership; also W. K. Lewis & Co. and J. Winslow Jones, and by them practiced in the United States at Portland, Maine, as can be proven by John C. Merry, residing at Elgin,

Illinois, and F. A. Wadner, residing at Chicago, Illinois, and said Rumery, Burnham, and Jones, at Portland, Maine; and that said supposed improvements, prior to said pretended improvement by said Wilson, or either of them, was known to, practiced by, and product sold by, Munson, Thomas & Co., a firm at Baltimore, Maryland,
36 and can be proven by F. A. Wadner, residing at Chicago, Illinois.

Further answering, and in support of the allegation that, the said Wilson was not the first and original inventor of the pretended improvement patented to him, as in said bill alleged, defendants aver that long anterior to the date of the pretended discovery by the said Wilson, the said pretended improvement were fully described in a certain public work, entitled the "Scientific American," published by Munn & Co., at the city of New York, in the year 1849, and in volume five (5), page eighty-one (81) thereof, and in an article entitled "To Preserve Meat for Voyages;" also in said work published in the year 1851, and in volume seven (7), at page three hundred and twenty-five (325) thereof, and in an article entitled "Preservation of Meats;" also, that long anterior to said pretended discovery by the said Wilson the improvement patented to him was well known to and practiced by *by*, and the product thereof largely sold by Stephen A. Provost, at the city of New York, State of New York, and at Clay City, in the State of Illinois, and also by Charles A. Fielding, at said Clay City, which facts defendants expect to show by the testimony of said Stephen A. Provost, residing in the city of New York, and having his place of business at No. 226 Trent street, in said city; by the testimony of said Charles A. Fielding, residing at said Clay City, and of William H. Jordan, residing at Morris, State of Illinois.

37 And defendants, further answering, upon information and belief, say that the things patented in the said several letters patent, or some substantial or material parts thereof claimed as new, were, anterior to the alleged invention thereof by the said several patentee', shown and described in the following printed publications, viz:

Tomlinson's Cyclopedia, published by George Virtue & Co., London and New York, 1852, vol. 1, pp. 703–708.

The London Herald, a journal published in London, England, the numbers for June 10th and June 19th, A. D. 1865, title of article "The Preservation of Food, especially Fresh Meat and Fish."

Le Liver de tous les Minoges on l'ars de Conserver Pendant Peusieurs ameies toutes les substance animals et vegetables, published in Paris, France, fourth edition, 1831.

Description des Brevets d'Invention, Paris, France, vol. 70, page 491, 1839 (1st series).

French patent 9881, July 25, 1839, to Bertram and Feydeau; the same, vol. 44, page, 289, 1855 (2d series).

French patent 12667, April 7th, 1855, to Martin de Segnac; the same, vol. 84, page 235, 1839 (1st series).

French patent 11613, July 17, 1839, to Louis Amedle Fastier. "Se Conevateur, Le livre de tous les Minages par Appert," 5th edition, 1858, Paris, France, Depot de Sibrance, pages III, X, XIII. Introduction, pages 47, 50, 59, 60, Le livre de tous les Minages, and in the following publications, viz:

38 Repertory of Arts, vol. 32, 2d series, page 196. London. Printed for J. Wyett, Repertory office, Hatton Garden, 1818.

Rees' Cyclopedia, vol. 28. Provisions, Preservation of.

The Cyclopedia or Universal Dictionary of Arts, Science, and Litera-

ture, vol. 28. Published London, 1819. Printed for Longman, Hurst, Rees. Orme and Brown, Paternoster Row.

And defendants, further answering, state, on information and belief, that the said alleged invention and thing patented and claimed in and by the said letters patent were in public use or on sale in this country for more than two years anterior to any application for the said several original patents by the said patentee, with his consent and allowance, and that they were known to, and used by, prior to the date of the respective patents—

William Archdeacon, who now resides at Transit House, Union Stock Yards, in Cook County, Illinois.

New York and Texas Beef-Preserving Co. and Allen, Poole & Co., in Galveston, Texas, which will be proved by Munroe, whose residence is now unknown; V. B. Poole, who now resides in Galveston, Texas; Gray, who now resides in Chicago, Illinois; J. D. Grinnell, who now resides in Dearfield, Massachusetts.

39 Edward Connorty, who now resides at Pooleville, Galveston, Texas.

N. B. Robinson, now residing at Galveston, Texas; Colonel E. McLain, Charles Stroden, Sam. Frazier, George Depmore, Frank Miller, all now residing in Galveston, Texas.

Dr. M. Pearl canned meat, using substantially the same improvement and making substantially the same product as that described and claimed in the above patent enumerated, and was succeeded by Hutchinson & Clapp, at Houston, in the State of Texas, long prior to the alleged invention above specified, and the same will be proved by Dr. M. Pearl, Albert Fleugal, Charles Sherman, and John Shubert, all now residing at Houston, in the State of Texas aforesaid, and Andrew McE. Duncan, of Chicago, now temporarily at Hannibal, Missouri.

H. Lee Borden, of Elgin, Illinois, and Gail Borden, formerly of Texas, now deceased, canned meats substantially with the same improvement, and produced the same product as is shown and described in the letters patent, using substantially the same kind of cans as those therein shown, at Borden Station, Colorado County, Texas, at Besticop County, Texas, and at Galveston, Texas, and at other places, to wit, at Elgin, in the State of Illinois, long prior to the date of the aforesaid letters patent, and sold meats so canned extensively throughout the country, all of which will be proven by the following named parties, to wit:

40 H. Lee Borden, now residing at Elgin, Kane County, Illinois.

John P. Borden, now living at Borden, Colorado County, Texas.

Frank Gibbie, now living at Lockport, N. Y.

J. E. Borden, who now resides at Galveston, Texas.

Furthermore, that the firm of Clapp & Bridgeman, and others, canned meat in the town of Fulton, in county of Aranses, and in the State of Texas, as early as A. D. 1869, using substantially the same improvement and mechanisms, and producing the same product, as shown and described in the complainants' letters patent, above enumerated, and sold the same extensively at that time and various other times, to wit, more than two years prior to the date of the alleged invention in above-specified letters patent, and the said products were sold by one Robert Hill, in Faneuil Hall Market, in the city of Boston, Mass., long prior to the date of complainants' letters patent, herein specified, and the same will be proved by James C. Bridgeman, who now resides at Kershena, Shawano County, Wisconsin.

William I. Clapp, now residing at Los Angelos, California.

Col. G. W. Fulton and Charles W. Holden, now residing in Fulton, Aranses County, Texas.

Robert Hill, who now resides at 68 Myrtle street, Boston, Massachusetts.

41 George H. Philbrook, now residing at 75 Montgomery street, Boston, Massachusetts.

George D. Brown, now residing corner Spring Park and River street, Jamaica Plains, Boston, Massachusetts.

George O. Sanborn, at 195 Devonshire street, Boston, Massachusetts.

This defendant will also prove by each of the following witnesses, respectively, that he used and knew of the public use of the inventions described and claimed in each of the above-named complainant's patents long prior to their respective dates, to wit, for more than two years prior to the respective applications therefor, to wit:

Jacob Waltmeyer, who now resides at 182 Hamburg street, Baltimore, Maryland.

V. A. Waidner, No. 222 Sharp street, Baltimore, Maryland.

George W. Day, of Evans, Day & Co., on Charles street, near Biddle street, Baltimore, Maryland.

D. M. Turner, No. 1042 Indiana avenue, Chicago, Illinois.

George Burnham, now residing in Cumberland, Missouri.

James McHowell, now residing in Hannibal, Missouri.

John Rickhow, at 134 N. Walter street, in Rochester, N. Y.

42 Richard Bertram, now at 241 Front street, New York City, N. Y.

Ananias Edgett, with E. A. Edgett, Newark, Wayne County, N. Y.

William H. Davis, now residing at Boston Highlands, Boston, Mass.

William J. Underwood, now at Belmont, Middlesex County, Mass.

Charles Mitchell, now resides at 24 Sullivan street, in Charlestown district, Boston, Mass.

William R. Lewis, now residing at 228 Boston Highlands, Boston, Mass.

Elbridge C. Cainey, residing in Somerville, Middlesex Co., Mass.

Horace H. Lewis, now residing in Boston, Suffolk County, Mass.

Stephen H. Provost, in the city of New York, N. Y.

William H. Hudson, now residing at Woodside, Queens County, New York.

Aaron K. Larabee, one of the firm of Kemp, Day & Co., in New York City.

B. R. Hawley, No. 1017 Brook street, Chicago, Illinois.

A. R. Robinson, now residing in Portland, Maine.

And defendants further say that said supposed improvement was, prior to granting by the United States said letters patent to said John A. Wilson, well known to and practiced by numerous other persons, copartnerships, and corporations at different places in the United States, the names of which persons so making prior use of said supposed

43 improvements, and the witnesses by whom the same may be proven, although now unknown to defendants, they will seek out and ask leave, when discovered, to mention in a supplemental or amended answer, and may be allowed to amend and rely on at the hearing.

And defendants, further answering, admit that Robert D. Hunter is and was, at the bringing of said bill, president of the St. Louis Beef Canning Company, but defendants say that the said Robert D. Hunter, as president of the said company, had not then, or has he now, his office or place of business at East St. Louis, in the State of Illinois. And defendants admit that H. B. Merrill, at the time of the exhibiting of the

original bill in this cause, was secretary of the said defendant corporation, but say that he did not ever, as secretary, have, nor has he, an office or place of business in the city of East St. Louis, in the State of Illinois.

These defendants further say that Henry L. Newman was not treasurer of corporation at the commencement of this suit, nor had any office as such officer at the city of East St. Louis, in the State of Illinois.

Defendants admit that the said Robert D. Hunter, H. B. Merrill, and Henry L. Newman were directors of this corporation at the time stated, but say that they were not the only managers of its affairs. And
44 defendants say that the said corporation had no stock yard at East St. Louis, or had, in any manner, either through the said Robert D. Hunter, H. B. Merrill, and Henry L. Newman, or otherwise, or at any time, or for them, or either of them, used, or caused to be used, the pretended invention in said bill set forth, or at any place.

And these defendants further answering say, they have already stated all they are informed or believe as to issuing said letters patent and as to said interrogatory annexed to said bill, defendants say they have not made, used, or sold any sheet-metal cans or articles of manufacture as alleged, but that said corporation defendant has, under different letters patent from those set up in said bill, and which belong to said defendant; and as to how and what profits defendants are not sufficiently informed to establish a belief.

And defendants further answering, deny all and all manner of unlawful combination or confederacy, wherewith they are charged by said bill, without this, that there is any other matter, cause, or thing in said complainants' said bill mentioned or necessary for defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, and denied, is true to the knowledge or belief of this defendant.

45 And all which matters and things defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

[L. S.] THE ST. LOUIS BEEF CANNING COMPANY.
NOBLE & ORRICK, *Defendant's Solicitors.*

JOHN W. NOBLE,
BLUFORD WILSON,
Counsel.

EASTERN DISTRICT OF MISSOURI:

Nathaniel C. Hudson, being duly sworn, on his oath says he is vice-president of said defendant, The St. Louis Beef Canning Company, and that affiant has heard read the foregoing answer, and that the matters there in stated are true, save where stated on information and belief, and as to these matters affiant believes said matters to be true: and affiant says said seal annexed is the seal of said corporation, and is annexed hereto by authority of said corporation, and that the president is absent.

NATHANIEL C. HUDSON.

Subscribed and sworn to before me this 19th July, 1879.

[L. S.] M. M. PRICE,
Clerk U. S. Circuit Court Eastern Dist., Mo.
By A. P. SELBY,
Deputy.

46 (Endorsed:) Filed July 21st, A. D. 1879. J. A. Jones, cl'k.

And afterwards, to wit, on Tuesday, the sixth day of December, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following proceedings were had in said court in said cause and entered of record, to wit:

Decree.

THE WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD MCNEILL, and CHARLES P. LIBBY
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. NEWMAN, and the St. Louis Beef Canning Company.

This cause having been heretofore argued by the counsel for the respective parties and considered by the court, it is ordered that the bill herein be dismissed for want of equity at the costs of the complainants; and that defendants have and recover of complainants their costs
47 and charges in this behalf expended to be taxed, amounting to the sum of thirty-eight dollars and forty cents, and that execution issue therefor.

And thereupon the complainants, by their solicitors, pray an appeal to the Supreme Court of the United States, which is allowed upon giving bond in conformity with law, with security to be approved by the court.

And afterwards, to wit, on the 7th day of December, in the year last aforesaid (1881), came the parties, by their solicitors, and filed in said clerk's office a stipulation in said cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States for the southern district of Illinois. In chancery.

48 THE WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD MCNEILL, and CHARLES P. LIBBY,
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. NEWMAN, and the St. Louis Beef-Canning Company.
} Bill for infringement of patent.

It is hereby stipulated and agreed that the above-entitled cause and the other cause pending in the same court, between the same parties, and also a cause in the United States circuit court for the northern district of Illinois, with the same complainants against the Chicago Packing and Provision Company and others, were all tried together by stipulation upon the same testimony, it having been stipulated that testimony taken in either cause might be used in either of the other causes with the same force and effect as if specially taken in that cause.

It is further stipulated and agreed that the record of all testimony and stipulations that may be certified up to the Supreme Court of the United States on appeal of either of the said three causes, may

49 be used as a part of the record in this cause, the same as if it had been specially certified up as a part of the record of this cause.

It is further stipulated and agreed that the record to be taken to the said Supreme Court in this cause, as belonging exclusively in this cause, shall consist only of the pleadings therein, the final decree, and this stipulation; but that all of the testimony and stipulations that are certified up in the records of either of the other causes above named, shall be considered a part of the record in this cause and be used in the Supreme Court the same as if again specially certified up as a part of the record in this cause.

Dated and signed this fifth day of December, A. D. 1881.

JNO. N. JEWETT,
Solic'r & of Counsel for Compl'ts.
COBURN & THACHER,
Solicitor & of Counsel for Def'ts.

(Endorsed:) Filed Dec. 7, A. D. 1881. J. A. Jones, cl'k.

50 And afterwards, to wit, on the 12th day of December, in the year last aforesaid, came the complainants by their solicitors, and filed in said clerk's office their appeal bond in said cause, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

In the circuit court of the United States for the southern district of Illinois. In chancery.

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNeill, and Charles P. Libby
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. Newman, and the St. Louis Beef Canning Company.

Know all men by these presents, that we, The Wilson Packing Company, a corporation of the State of Illinois, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, as principals, and William J. Wilson, and William T. Palmer, of the city of Chicago, in the county of

51 Cook, and State of Illinois, as sureties, are held and firmly bound unto Robert D. Hunter, H. B. Merrill, Henry L. Newman, and the St. Louis Beef Canning Company, in the sum of one thousand dollars, to the payment of which well and truly to be made, we bind ourselves, and each of us, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof, the said Wilson Packing Company has caused these presents to be signed by its president in its corporate name, and its corporate seal to be hereto attached; and the said Arthur A. Libby, Archibald McNeill, Charles P. Libby, William J. Wilson, and William T. Palmer have hereunto set their hands and seals this eighth (8th) day of December, A. D. 1881.

Whereas, the above named, The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, have been allowed an appeal to the Supreme Court of the United States from the decree of the circuit court of the United States for the southern district of

52 Illinois, rendered by the said circuit court in the above entitled cause, and entered of record therein on the sixth (6th) day of December. A. D. 1881.

Now, therefore, the condition of this obligation is such, that if the above-named The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, shall prosecute their said appeal to effect, and answer all costs in case they shall fail to make good their plea, then this obligation shall be void; otherwise remain in full force and effect.

[L. S.]

THE WILSON PACKING COMPANY,
By WILLIAM J. WILSON, *Pres't.*
WILLIAM J. WILSON, *Treas.*
ARTHUR A. LIBBY. [SEAL.]
ARCHIBALD McNEILL. [SEAL.]
CHAS. P. LIBBY. [SEAL.]
WILLIAM J. WILSON. [SEAL.]
WILLIAM T. PALMER. [SEAL.]

Approved Dec'r 9, 1881.

THOMAS DRUMMOND.

(Endorsed:) Filed Dec. 12, A. D. 1881. J. A. Jones, clerk.

53 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, in the Circuit Court, ss:

I, John A. Jones, clerk of the circuit court of the United States of America for said southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the pleadings, the decree, stipulation, and appeal bond, in a certain cause lately pending in said court, wherein The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby were complainants, and Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company were defendants, as fully as the same now appear of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in the city of Springfield, in said district, this second day of January in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 1190. The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, appellants, vs. Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company. S. Illinois, C. C. U. S. Filed 11 January, 1882.